IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 471 OF 2004

1. Smt. Sitabai Ramrao Shirodkar, widow of Ramrao Shirodkar, major, housewife,

2. Shri Vardhaman Ramrao Shirodkar, s/o Ramrao Shirodkar, major, married, tailor,

3. Shri Gajanan Ramrao Shirodkar, s/o Ramrao Shirodkar, major, married, service,

4. Shri Vijaykumar Ramrao Shirodkar, s/o Ramrao Shirodkar, major, married, service, all r/o Huddo Vaddo, Anjuna, Bardez, Goa. ...Petitioners

Versus

Shri Suresh Rauji Dabholkar, major, married, carpenter, r/o Dabhol Vaddo, Anjuna, Chapora, Bardez, Goa. ...Respondent.

Mr. Ranjit Satardekar, advocate for the petitioners.

CORAM : A. P. LAVANDE, J.

DATE : 29th April, 2005.

ORAL JUDGMENT

Rule. Respondent though served, absent. Having regard to

the limited challenge involved in the petition, it is considered necessary to dispose of the petition at the admission stage itself.

2. Heard Mr. Satardekar for the petitioners. By this petition, the petitioners assail order dated 18th July, 2001, condoning the delay in filing the appeal by the respondent against the judgment and decree passed by the trial Court. The lower Appellate Court has condoned the delay of almost three years. The lower Appellate Court has condoned the delay even without imposing costs. Mr. Satardekar, learned counsel appearing for the petitioners, submits that there was abundant material before the lower Appellate Court to establish gross negligence on the part of the respondent in filing the appeal and that the lower Appellate Court has not considered the material and as such no findings have been given on the basis of the material placed by the petitioners herein.

3. I have considered the submissions made by the learned counsel for the petitioners. No doubt the impugned Order does not disclose that the lower Appellate Court has considered in detail the material placed by both the sides before giving a finding in favour of the respondent. None the less, the fact remains that the lower Appellate Court has chosen to condone the delay. It is by now well-settled by a catena of decisions of the Apex Court that the jurisdiction to condone delay in filing appeals has to be liberally exercised. I am, therefore, not inclined to set aside the impugned Order in exercise of jurisdiction

under Article 227 of the Constitution of India. However, I am unable to accept the approach of the lower Appellate Court in condoning the delay without imposing any costs in favour of the petitioners herein. Having regard to the delay in filing the appeal before the lower Appellate Court, in my opinion it would be just and proper to award costs of Rs.5,000/- (rupees five thousand only) in favour of the petitioners. The costs of Rs.5,000/- shall be deposited by the respondent in the District Court, North Goa at Panaji, within a period of twelve weeks from today. Upon the deposit being made, the Appeal filed by the respondent will be registered. Liberty to the petitioners to withdraw the costs after deposit.

4. A copy of this Order be sent to the respondent in order to enable him to deposit the costs.

5. The petition is disposed of in aforesaid terms.

A.. P. LAVANDE, J.

mc.